

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DAVID COHEN & SYLVIA K. JOHANN

Civil Action No. 09civ 6709 (HB)

Plaintiffs

- against -

**AFFIDAVIT OF DAVID COHEN
IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

DELTA AIR LINES INC.

Defendant

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STATE OF NEW YORK)

COUNTY OF *Albany*)
: ss:

DAVID COHEN, being duly sworn, deposes and says:

1. I am one of the Plaintiffs herein and make this affidavit in opposition to Defendant, Delta Air Lines, Inc. (hereinafter "Delta") motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and b. in Opposition to granting Delta judgment on the pleadings pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure.

2. This Court should grant summary judgment in favor of the Plaintiffs and against the Defendant in that the Delta has not introduced any evidence that it took all measures that could reasonably be required to avoid the delay to Plaintiffs or that it was impossible for them to take such measures.

3. The grounds of opposition to the motion and in support of summary judgment for Plaintiffs are fully set forth herein and in the Memorandum of Law annexed herewith, along with the Exhibits annexed to the Motion of Defendant.

4. A copy of DL_TERM.TXT is annexed herewith as Exhibit 1. It was produced

by Defendant during discovery and reflects Plaintiff, David Cohen's, skymiles account number 0250031234 history.

5. I have been an airline passenger since 1960, making numerous business travel and personal travel trips each year. Exhibit 1 reflects that I logged 396176 miles on Delta alone. I became a member of United Airlines 100,000 mile club in 1970, have flown all over the world and all over the United States on various airlines. I was the North American Manager for Montana Austria Airlines, an Austrian flag carrier, in 1979 and 1980, responsible for supervising its U.S. flight operations to and from Kennedy Airport and Los Angeles airport. and have probably flown between 2 and 3 million miles, although I cannot detail all the flights I have taken at this time.

6. Delta attempts to hide its failure to provide a gate crew for an inbound flight as a weather related cause based on an air traffic control situation that caused the delay in departure from Kennedy Airport of flight 147 to Atlanta that January 1, 2008.

7. Aboard the inbound flight an announcement was made that much of the delay time was being made up in flight and that the flight was landing at approximately 8:00PM, and in fact the flight did actually land at approximately 8:00 PM and was at the gate by 8:12 PM Delta knew of the arrival of this flight at this time as the announcement could not have been made by the crew without consultation with their operations, knew that there were passengers aboard with critical connections, but failed to provide a gate crew to promptly deboard the aircraft upon arrival.

8. I have flown numerous times, in addition to managing the United States operation of an airline to know that on many occasions, late connecting passengers are boarded within a minute or two of the aircraft actually pulling back from the gate and departing. The

testimony of Defendant's witness, Robert Rector is nonsense, and merely self-serving to state that no passengers could be boarded within 15 -20 minutes of departure. (Exhibit E, at 13).

9. Upon Plaintiffs arrival at the Buenos Aires departure gate at approximately 8:40PM, they could have easily been boarded in the couple of minutes remaining, prior to the aircraft push back from the gate and departure.

10. Delta failed to permit the Plaintiffs to board notwithstanding that the aircraft was still at the gate and not departing.

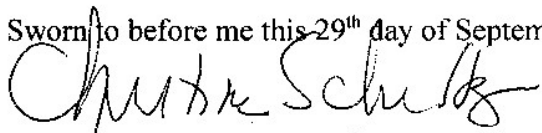
11 Using my home computer, admittedly not as sophisticated as Delta's system, I have easily determined connecting flights from Santiago, Chile to Buenos Aires, Argentina, obtaining results from internet web sites within one or two minutes.

12. Prior to booking the tickets to Buenos Aires on Delta, I had researched the connecting flights from Santiago to Buenos Aires, and from Buenos Aires to Santiago, and knew that there were numerous flights every day. Therefore, when Plaintiffs were not permitted to board the Buenos Aires flight, and went to the ticket counter in the terminal, I suggested that we be permitted to be routed through Santiago with a connection to Buenos Aires the next morning, as a reasonable means of remedying the situation, but Delta's agent refused to even consider it.

13 It took 12 minutes for Plaintiffs Cohen & Johann to travel from the arrival gate E2 to departure gate T1, the departure gate of Flight 101, the Buenos Aires connecting flight, but although the aircraft was still in the gate, Delta refused to allow Plaintiffs to board the aircraft.


David Cohen

Sworn to before me this 29th day of September



CHRISTINE SCHULTZ
Notary Public, State of New York
Qualified in Saratoga County
No. 01SC6020397
Commission Expires March 1, 2011

2011